

Appeal from a decision of the Oregon State Office, Bureau of Land Management, rejecting oil and gas lease offer OR 19260 (Wash.).

Set aside and remanded.

1. Oil and Gas Leases: Discretion to Lease

The Secretary of the Interior has the authority to refuse to lease Federal lands for oil and gas purposes, even if the lands have not been withdrawn from the operation of the mineral leasing laws. The refusal to lease must be supported by facts to demonstrate that the leasing would not be in the public interest. Mere conclusory findings not so supported by factual data, are insufficient to predicate a rejection in the circumstances.

2. Oil and Gas Leases: Generally -- Oil and Gas Leases: Applications:  
Generally -- Oil and Gas Leases: Stipulations

The Bureau of Land Management has authority to require the execution of special stipulations to protect environmental and other land use values for lands where those values are present. Oil and gas offers should not be rejected because of the asserted presence of environmental or other values, without prior consideration being given to the feasibility of stipulations to protect such values.

APPEARANCES: David H. Yates, pro se.

## OPINION BY ADMINISTRATIVE JUDGE FISHMAN

David H. Yates appeals from the June 20, 1979, decision of the Oregon State Office, Bureau of Land Management (BLM), rejecting his noncompetitive oil and gas lease offer OR 19260. BLM rejected appellant's offer for the following reasons:

1. The lands applied for encompass a scenic highway corridor.
2. The lands applied for are within a critical raptor nesting and hunting area.

While in similar cases a complete chronology is not always necessary or desirable, such a chronology may be of assistance in this instance.

July 12, 1978, appellant filed a noncompetitive oil and gas lease offer, with the Oregon State Office, Bureau of Land Management.

January 16, 1979, Spokane, Washington, District Manager recommended that the subject lease be issued.

February 13, 1979, BLM issued a decision informing appellant that BLM is prepared to issue a noncompetitive lease provided appellant accept two special stipulations. The first stipulation concerned antiquities and objects of historic value, while the second stipulation made the lease subject to the terms and provisions of section 302 of the Department of Energy Organization Act (42 U.S.C. § 7152 (1976)). Appellant signed the stipulations and returned them to BLM on February 16, 1979.

March 9, 1979, the U.S. Geological Survey (USGS) reported that the application was not within a Known Geologic Structure (KGS) nor a Known Geothermal Resource Area (KGRA).

April 5, 1979, an application for assignment of the anticipated lease from Yates to Shell Oil Company was filed for approval.

April 13, 1979, the Spokane, Washington, District Manager amended his recommendation of January 16, 1979. As amended, his recommendation was that the lease not be issued because lands applied for encompass a scenic highway corridor and critical raptor nesting and hunting area.

June 20, 1979, BLM issued its decision rescinding the earlier decision requesting acceptance of stipulations and issued a decision rejecting the offer.

In his statement of reasons for appeal, appellant points out that BLM did not designate which portions of the land subject to the lease were rejected as being within a highway corridor and which portion is within a critical raptor nesting and hunting area. Appellant bolsters his contention by pointing out that the land subject to the lease covers two townships and six sections. Appellant further argues that BLM acted in an arbitrary way without considering alternative measures such as imposing restrictive stipulations over the affected areas. Finally, appellant points out that the lands surrounding those subject to the lease embrace oil and gas leases with exploratory rights.

[1] As appellant recognizes, the Secretary of the Interior, through his authorized representative, BLM, has the authority to refuse to lease Federal lands for oil and gas purposes, even if the lands have not been withdrawn from the operation of the mineral leasing laws. Udall v. Tallman, 380 U.S. 1, 4 (1963); Robert P. Kunkel, 41 IBLA 77, 78 (1979); James O. Breene, Jr., 38 IBLA 281 (1978).

BLM may refuse to issue a lease where it sets forth its reasons for doing so and the background data and facts of record support the conclusion that the refusal is required in the public interest. Robert P. Kunkel, *supra* at 78. Where the record describes a devotion of land to a public purpose which is worthy of preservation and indicates that the development of an oil and gas field would be incompatible with this public purpose and would be less in the public interest than preserving the status quo, BLM's decision not to issue the lease will be affirmed absent compelling reasons for its modification or reversal. Duncan Miller, 31 IBLA 371 (1977); Duncan Miller, 31 IBLA 351 (1977); Duncan Miller, 30 IBLA 350, 352 (1977); L. A. Joller (Supp.), 28 IBLA 8, 10 (1976).

BLM rejected appellant's lease offer on the basis that the lands applied for encompass a scenic highway corridor and are within a critical raptor nesting and hunting area. BLM's decision was based upon a recommendation by the Spokane District Manager.

The views stated by the District Manager and incorporated by BLM into its decision were merely conclusions without any factual basis to substantiate them. While it may be true that the conclusions may be sound, nothing in the decision or elsewhere in the record bolsters the conclusions.

Scenic highway corridors and raptor nesting and hunting grounds are cogent factors in determining whether a noncompetitive oil and gas lease issuance would be in the public interest. However, these two factors do not stand alone. Instead they must be weighed with other

interests including the public's need for mineral fuels. <sup>1/</sup> As noted by appellant, the subject lands are in two townships with issued oil and gas leases in the immediate vicinity. BLM should be mindful of the possibility that not all of the land described in the rejected lease offer will encroach upon the highway corridors and raptor nesting areas. It may be that upon more careful study that only a portion of the land adversely affects the highway corridor and raptor nesting areas.

[2] In its earlier decision, BLM had imposed special stipulations regarding antiquities protection and compliance with provisions of the section 302 of the Department of Energy Organization Act. Appellant accepted these stipulations. Appellant suggests that it may be possible to eliminate any adverse impact on the scenic highway corridor and the raptor nesting area by requiring the imposition of further special stipulations. As evidenced by its earlier action, BLM has the authority to require the execution of special stipulations to protect environmental and other land use values when deciding to issue a lease. Robert P. Kunkel, supra at 79; Dean W. Rowell, 37 IBLA 387, 389 (1978). As noted in Stanley M. Edwards, 24 IBLA 12, 18 (1976), "Complete rejection of a lease offer is a more extreme measure than the most stringent stipulation." BLM should have considered imposing further special stipulations to protect the environment and scenic considerations raised by the Spokane District Manager. From the

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<sup>1/</sup> The National Mining and Mineral Policy Act, 30 U.S.C. § 21a (1976), requires consideration of this need. It reads in part:

"The Congress declares that it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs, (3) mining, mineral, and metallurgical research, including the use and recycling of scrap to promote the wise and efficient use of our natural and reclaimable mineral resources, and (4) the study and development of methods for the disposal, control, and reclamation of mineral waste products, and the reclamation of mined land, so as to lessen any adverse impact of mineral extraction and processing upon the physical environment that may result from mining or mineral activities.

"For the purpose of this section 'minerals' shall include all minerals and mineral fuels including oil, gas, coal, oil shale and uranium.

"It shall be the responsibility of the Secretary of the Interior to carry out this policy when exercising his authority under such programs as may be authorized by law other than this section."

record before us, we are unable to tell what, if any, consideration of the facts was given in arriving at the conclusions expressed in the decision. For these reasons, we consider it necessary to remand the case for readjudication based on a full consideration of the competing interests involved in the issuing of an oil and gas lease for these lands. If BLM should reach the same conclusion reached in its decision, the new decision should be buttressed with facts to justify its actions.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and remanded for further consideration consistent with this opinion.

Frederick Fishman  
Administrative Judge

We concur:

Douglas E. Henriques  
Administrative Judge

Joan B. Thompson  
Administrative Judge

